S.B. CIVIL WRIT PETITION NO.79/2005
Ratan Puri vs. Vimal Kumar and others.

Date : 12.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Shishodia, for the petitioner.

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Heard learned counsel for petitioner.

The petitioner is aggrieved against the decree passed by the District Judge, Pratapgarh camp Chittorgarh in Debt Recovery Revision No.11/2001 which was filed under the provisions of Rajasthan Relief of Agricultural Indebtedness Act, 1957 (for short the “Act of 1957”).

The brief facts of the case are that the non-petitioner/plaintiff filed two suits bearing no.46/1997 and 47/1994 for recovery of loan amount on the basis of two pronotes. The suits were decreed by the Civil Court on 3.3.1998. The said judgments and decrees were challenged by filing appeals which were registered as Civil Appeal Decree Nos.9/1998 and 10/1998. The appeals were partly allowed by the appellate court vide judgment and decree dated 30.3.1999 and the matter was remanded to the trial court to decide the suit after taking into account the relevant provisions of the Act of 1957 on the plea of the petitioner that he is an agriculturist, therefore, civil suit cannot be decreed against the petitioner.

It appears that after the said remand order, proceedings were initiated under Section 6 of the Act of 1957. The trial court dismissed the claim petition of the non-petitioner by judgment dated 16.5.2001. The non-petitioner/plaintiff preferred revision petition and the District Judge, Pratapgarh allowed the revision vide judgment dated 13.11.2003 and held that the trial court failed to draw presumption under Section 118 of the Negotiable Instruments Act, 1881 (for short the "Act of 1881") and, therefore, committed serious illegality. The revisional court reversed the finding of the learned trial court and decreed the suit of the plaintiff for the principal amount of Rs.40,000/- and awarded interest at the rate of 6% per annum from 23.6.1991. The revisional court also gave benefit of payment of decreetal amount in instalments.

Hence, this writ petition.

According to learned counsel for the petitioner, the revisional court committed serious error of law in drawing presumption under Section 118 of the Act of 1881. It is also submitted that in fact, the petitioner repaid all amount which was due in the petitioner to the plaintiff and the pronotes were executed by the petitioner to settle the old account only. It is also submitted that even the witness of the plaintiff admitted that the amount was not paid at the time of execution of the pronotes. It is also submitted that the trial court has rightly drawn adverse

inference against the plaintiff on account of non-production of his account books because of the reason that the petitioner's case is that the repayment of all liability of the petitioner has been recorded in these account books of the plaintiff but he did not produce the same, otherwise, it would have gone against the plaintiff.

Learned counsel for the petitioner further vehemently submitted that the presumption under Section 118 of the Act of 1881 cannot be drawn where civil disputes are there and since the provisions made under Sections 118 to 121 are the special Rules of Evidence, therefore, they can be invoked only in criminal cases.

I have considered the submissions of learned counsel for the petitioner and have perused the facts of the case and the impugned order.

So far as the provision of Section 118 of the Act of 1881 are concerned, it applies to all cases as the said provision has been made in a special act and Section 118 starts with the language “until the contrary is proved, the following presumptions shall be made..”. What presumption can be drawn has been given under the sub-clauses (a) to (g) of Section 118 of the Act of 1881.

Learned counsel for the petitioner could not point out any provision of law by which Chapter-XIII of the Act of 1881 can be made applicable to the criminal cases only.

So far as the contention of learned counsel for the

petitioner that the witness of the plaintiff admitted that the payment was not made to the petitioner at the time of execution of the pronotes, is concerned, the same deserves to be rejected because of the reason that the petitioner himself admitted his signatures on the pronotes and today also, according to learned counsel for the petitioner, the pronotes were executed when the liability of the petitioner was there. The case of the petitioner is that the petitioner repaid all dues of the plaintiff. Repayment of loan by the petitioner to the plaintiff is a pure question of fact and that has been decided by the revisional court against the petitioner after drawing lawful inference in accordance with Section 118 of the Act of 1881, therefore, I do not find any illegality in the impugned order.

Accordingly, this writ petition having no merit is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya